

Environmental Protection Agency

§ 78.19

correct errors made in the transcribing; and

(2) Up to 7 days (or other shorter, reasonable period established by the Presiding Officer) from the submission of the corrections in order to file objections to the proposed corrections.

(e) The Presiding Officer will determine which, if any, corrections should be made to the transcript and incorporate them into the record.

[58 FR 3760, Jan. 11, 1993, as amended at 62 FR 55488, Oct. 24, 1997]

§ 78.17 Proposed findings and conclusions and supporting brief.

Within 45 days (or other shorter, reasonable period established by the Presiding Officer) after issuance of a notice under § 78.16(c) of this part that the complete transcript of the evidentiary hearing is available, any party may file with the Hearing Clerk proposed findings and conclusions on the issues referred to the Presiding Officer and a brief in support thereof. Briefs shall contain appropriate references to the record. The Presiding Officer may allow reply briefs.

[58 FR 3760, Jan. 11, 1993, as amended at 62 FR 55488, Oct. 24, 1997]

§ 78.18 Proposed decision.

(a) The Presiding Officer will review and evaluate the record, including the proposed findings and conclusions and any briefs filed by the parties, and issue a proposed decision on the factual, policy, and legal issues referred by the Environmental Appeals Board for decision under § 78.6(b)(2)(ii) of this part, accompanied by findings of fact and proposed conclusions of law, as appropriate, within a reasonable time after the evidentiary hearing is completed. The Hearing Clerk will promptly serve copies of the proposed decision on all parties and on the Environmental Appeals Board.

(b) The proposed decision of the Presiding Officer shall become the final agency action under section 307 of the Act unless:

(1) A party files objections with the Environmental Appeals Board pursuant to § 78.20(a) of this part, or

(2) The Environmental Appeals Board *sua sponte* files a notice that it will re-

view the decision under § 78.20(b) of this part.

[58 FR 3760, Jan. 11, 1993, as amended at 62 FR 55488, Oct. 24, 1997]

§ 78.19 Interlocutory appeal.

(a) Interlocutory appeal from orders or rulings of the Presiding Officer made during the course of a proceeding may be taken if the Presiding Officer certifies those orders or rulings to the Environmental Appeals Board for interlocutory appeal on the record. Any requests to the Presiding Officer to certify an interlocutory appeal shall be filed within 10 days of notice of the order or ruling and shall state briefly the grounds for the request.

(b)(1) Within 15 days of the filing of any request for interlocutory appeal, the Presiding Officer may certify an order or ruling for interlocutory appeal to the Environmental Appeals Board if:

(i) The order or ruling involves an important question on which there is substantial ground for difference of opinion, and

(ii) Either:

(A) An immediate appeal of the order or ruling will materially advance the ultimate completion of the proceeding, or

(B) A review after the proceeding is completed will be inadequate or ineffective.

(2) If the Presiding Officer takes no action within 15 days of the filing of a request for interlocutory appeal, the request shall be automatically dismissed without prejudice.

(c) If the Presiding Officer grants certification, the Environmental Appeals Board may accept or decline the interlocutory appeal within 30 days of certification. If the Environmental Appeals Board decides that certification was improperly granted, it will decline to hear the interlocutory appeal. If the Environmental Appeals Board takes no action within 30 days of certification, the interlocutory appeal shall be automatically dismissed without prejudice.

(d) If the Presiding Officer declines to certify an order or ruling for an interlocutory appeal, the order or ruling may be reviewed by the Environmental Appeals Board only upon an appeal of the proposed decision following completion of the proceedings before the